

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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February 13, 2023

Agenda ID #21350
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 22-08-001:

This is the proposed decision of Administrative Law Judge Shannon O'Rourke. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's March 16, 2023 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:smt

Attachment

Decision **PROPOSED DECISION OF ALJ O'ROURKE** (Mailed 2/13/2023)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of
PacifiCorp (U901E) for Approval of its
2023 Energy Cost Adjustment Clause
and Greenhouse Gas-Related Forecast
and Reconciliation of Costs and
Revenue.

Application 22-08-001

**DECISION APPROVING SETTLEMENT REGARDING
PACIFICORP'S 2023 GREENHOUSE GAS
EMISSIONS ALLOWANCE PROGRAM
COSTS AND CLIMATE CREDITS**

Summary

This decision approves the December 9, 2022 partial settlement, as modified, by PacifiCorp d/b/a Pacific Power (PacifiCorp), the California Farm Bureau Federation, and the Public Advocates Office at the California Public Utilities Commission resolving all issues raised with respect to the Greenhouse Gas (GHG) Emissions Allowance program costs and Climate Credits. This proceeding remains open to address all other issues within the scope of PacifiCorp's Energy Cost Adjustment Clause filing.

This decision approves an increased semi-annual Climate Credit for 2023 for residential and small business customers of \$268.56, an increase of 102% from the 2022 semi-annual amount of \$132.85. This decision also recognizes that Decision (D.) 23-02-014, adopted on February 2, 2023, requires PacifiCorp to accelerate disbursement of the April 2023 residential electric Climate Credit. This

decision modifies the partial settlement to allow PacifiCorp to make adjustments to its semi-annual Climate Credit disbursements as compliance with D.23-02-014 necessitates.

In addition, this decision updates the surcharge that recovers costs for procurement of GHG allowances for PacifiCorp's retail compliance obligation under California's Cap-and-Trade Program. The impact of the proposed change to the GHG Surcharge is an overall revenue requirement increase of \$10.7 million or approximately 9.7% rate increase overall.

This proceeding remains open.

1. Background

PacifiCorp d/b/a Pacific Power (PacifiCorp) is an investor-owned utility providing electric retail service to customers in California, Idaho, Oregon, Utah, Washington and Wyoming. As a California electric utility, PacifiCorp is annually allocated Greenhouse Gas (GHG) Emissions Allowances to consign to auction as part of California's Cap-and-Trade Program. PacifiCorp is required to consign all of its allocated GHG allowances in the year they are allocated and return the net proceeds from their consignment to eligible California ratepayers. After program expenses and funding for clean energy and energy efficiency programs, the remaining net revenue is returned to residential and small business customers through the California Climate Credit, which is applied to bills twice a year (in April and October). PacifiCorp and other California electric utilities must also surrender or make contractual arrangements for other parties to surrender a sufficient number of GHG Compliance Instruments (allowances and/or offsets) to cover their annual GHG emissions costs under the Cap-and-Trade Program.

In Decision (D.) 12-12-033, the Commission adopted a methodology for allocating proceeds from the consignment of GHG allowances to eligible

customers and directed utilities to record GHG allowance proceeds and compliance costs in certain accounts, which are then reviewed annually within an Energy Cost Adjustment Clause (ECAC) and GHG-Related Forecast and Reconciliation of Costs and Revenue proceeding. This methodology was updated in D.21-08-026 to remove the volumetric small business return and replace it with a flat credit equal in size to the residential California Climate Credit.

On August 1, 2022, PacifiCorp filed Application (A.) 22-08-001 requesting authority to: i) update its Balancing Rate and Offset Rate pursuant to its ECAC; ii) update the surcharge that recovers costs for the procurement of GHG allowances; and iii) update the California Climate Credit that returns revenue from the consignment at auction of GHG allowances to eligible customer classes.

On September 2, 2022, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) filed a timely protest to PacifiCorp's application.

A prehearing conference (PHC) was held on September 27, 2022, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary.

The California Farm Bureau Federation (Farm Bureau) made an oral motion for party status at the PHC, which was granted.

The parties held a settlement conference on December 1, 2022, which was recessed until it was reconvened on December 9, 2022, to allow Cal Advocates to participate. The settlement conference was held as required by Rule 12.1(b) of the Commission's Rules of Practice and Procedure with due notice to all parties to the proceeding. On December 9, 2022, PacifiCorp, the Farm Bureau, and Cal Advocates (the Settling Parties) jointly moved for approval of their partial settlement regarding PacifiCorp's 2023 ECAC Application (the Settlement) and

the admission of documents into evidence. The Settlement is appended as Attachment A. Also on December 9, 2022, PacifiCorp moved for confidential treatment for exhibits admitted into evidence.

In its application, PacifiCorp requests authorization to update both the surcharge that recovers the costs for procurement of GHG allowances for its retail compliance obligation under California's Cap-and-Trade Program (GHG Surcharge), and the California Climate Credit that returns proceeds from the consignment to auction of allocated GHG allowances to residential and small business customers. PacifiCorp does not have any known emissions-intensive trade-exposed (EITE) customers as of the date of its application. The GHG Surcharge consists of a true-up related to actual GHG allowance costs and related interest set forth in PacifiCorp's 2022 application (A.21-08-004) and a forecast of 2023 GHG allowance costs. The impact of the proposed change to the GHG Surcharge is an overall rate increase of \$10.7 million or approximately 9.7%.¹ This would result in an average monthly bill increase for a residential non-California Alternate Rates for Energy (CARE) customer from \$139.59 to \$152.53 and for a residential CARE customer from \$108.45 to \$118.93.²

The Settling Parties seek approval of the Settlement as soon as possible in order to effectuate the GHG Surcharge and avoid delays in distribution of California Climate Credits. Timely distribution would not be possible if approval of the GHG costs and credits were delayed until the conclusion of the proceeding on other issues in the 2023 ECAC Application.³

¹ PacifiCorp Response to Administrative Law Judge's (ALJ) Ruling, January 10, 2023, at 2.

² *Ibid.*

³ Motion at 4.

On February 2, 2023, after the Settlement was submitted, the Commission adopted D.23-02-014. D.23-02-014 requires, among other things, that PacifiCorp “accelerate the payment of the electric climate credit due to its residential customers in April 2023 to a date as soon as can be practicably implemented.”⁴ That decision provides further guidance that “...the Commission expects the climate credit disbursement to begin no later than March 1, 2023 for all utilities”⁵ and acknowledges that for some entities “...the 2022 electric climate credit amount may need to be used if the Commission has not authorized a 2023 electric climate credit by the time the acceleration occurs.”⁶

2. Settlement

The Settling Parties agree that the GHG Emission Allowance auction proceeds, less GHG Administration Expenses, Customer Outreach Costs, and funding for energy efficiency programs, will be returned to residential and small business customers through the semi-annual California Climate Credit distributed in customer bills in April and October of 2023. The total amount of the proposed residential and small business California Climate Credit to be distributed in 2023 is approximately \$23.7 million. The proposed semi-annual residential and small business per-customer California Climate Credit for California PacifiCorp customers in 2023 is \$268.56, or a total of \$537.12.

The Settling Parties agree that approval of PacifiCorp’s update to both the GHG Surcharge and the California Climate Credit is in the public interest and request that PacifiCorp’s updated GHG Surcharge be effective upon the filing of

⁴ D.23-02-014 at Ordering Paragraph 8.

⁵ *Id.* at 12.

⁶ *Id.* at 11.

a Tier 1 Advice Letter by PacifiCorp within 30 days of a Commission decision approving the Settlement.

3. Discussion

3.1. Settlement Agreement Standard of Review

The Settlement is uncontested and is evaluated under the criteria set forth in Rule 12.1(d) of the Commission's Rules of Practice and Procedure. Rule 12.1(d) states, "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest." As explained below, the Settlement, as modified herein to account for the newly established requirements in D.23-02-014, meets the standard of review established in Rule 12.1(d) and is approved.

3.1.1. Reasonable in Light of the Whole Record

Rule 12.1(d) requires a settlement to be reasonable in light of the whole record. The record in this proceeding consists of the exhibits and testimony filed with PacifiCorp's Application, the Settlement, and PacifiCorp's response to a December 21, 2022 ALJ ruling. The evidentiary record, as reflected in the January 30, 2023 ALJ ruling admitting exhibits into evidence and granting confidential treatment to certain exhibits, provides sufficient evidence to support the Settling Parties' determination that the proposed GHG Surcharge and California Climate Credit are accurate and to enable the Commission to implement the Settlement and to discharge the Commission's regulatory obligations. As a result, the Commission may give the parties' evaluation of the

record material weight.⁷ Therefore, the Settlement is reasonable in light of the whole record before the Commission.

3.1.2. Consistent with the Law

Rule 12.1(d) requires a settlement to be consistent with applicable law. The applicable law includes state and federal law and Commission decisions. Relevant Commission decisions are those establishing the methodologies used to arrive at the GHG Surcharge and the California Climate Credit as well as ECAC calculations established in previous PacifiCorp ECAC decisions. As identified in the Background section of this decision, after the Settlement was submitted, the Commission adopted D.23-02-014, which ordered all electric investor-owned utilities to accelerate disbursement of the April 2023 residential electric Climate Credit to a date as soon as can be practicably implemented. That decision also allowed acceleration of the disbursement to small business customers at a utility's discretion. The Commission further clarified in D.23-02-014 that it expects the disbursements to begin by March 1, 2023 and that some entities may need to disburse their 2022 Climate Credit amount if their 2023 Climate Credit is not yet authorized at the time of acceleration.

The existing terms of the Settlement would have PacifiCorp disburse a semi-annual Climate Credit in the amount of \$268.56 in April and October 2023. A disbursement of \$268.56 to residential electric customers in April 2023 would be inconsistent with the directives from D.23-02-014 regarding the acceleration of the Climate Credit disbursement.

To reconcile this inconsistency and to enable the Settlement to comply with all relevant rules, we turn to the authority the Commission has to modify

⁷ Southern California Gas Co. (1999) D.00-09-034, 2000 Cal. PUC LEXIS 694 at *29.

settlements pursuant to Rule 12.4(c) of the Commission's Rules of Practice and Procedure. Rule 12.4(c) states that the Commission may propose alternative terms to the parties to a settlement and allow the parties reasonable time to elect to accept such terms or request other relief. In order to ensure the terms of the Settlement are consistent with D.23-02-014, we modify the settlement as follows: To the extent compliance with D.23-02-014 necessitates PacifiCorp disburse an electric Climate Credit before April 2023 and in an amount other than \$268.56, PacifiCorp shall do so, and it shall adjust its October 2023 Climate Credit disbursement to ensure affected customers receive the full cumulative annual Climate Credit amount due to them.

With the above modification, we find that the Settlement is consistent with relevant statutes, rules and Commission decisions.

3.1.3. In the Public Interest

Rule 12.1(d) requires a settlement to be in the public interest. The impact of the proposed change to the GHG Surcharge is an overall increase of \$10.7 million to be recovered in PacifiCorp's rates in 2023. This amount is reasonable because it is based on forecast 2023 costs for the procurement of GHG Emission Allowances for PacifiCorp's retail compliance obligation under California's Cap-and-Trade Program, plus a true-up related to actual costs for prior years, and adjustments for franchise fees and uncollectibles. The Settlement is in the public interest because it fully addresses the GHG-related issues raised in this case without the need for hearing, provides an accurate price signal to ratepayers of the cost of compliance with California's Cap-and-Trade Program, and provides a

semi-annual Climate Credit to ratepayers to help ease the transition toward electricity rates that fully reflect the cost of carbon.⁸

4. Election to Accept Modifications

Pursuant to Rule 12.4(c) of the Commission's Rules of Practice and Procedure, the Commission may propose alternative terms to the parties to a settlement and allow the parties reasonable time to elect to accept such terms or request other relief. The modifications to the proposed settlement set forth in this decision constitute such "alternative terms." In their opening comments on the proposed decision, the Settling Parties shall address whether they accept the modifications to the Settlement or request other relief.

5. Conclusion

This proceeding remains open. All remaining issues identified in the assigned Commissioner's Scoping Memo and Ruling dated October 11, 2022 will be addressed through a subsequent decision.

6. Comments on Proposed Decision

The proposed decision of ALJ Judge Shannon O'Rourke in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

7. Assignment of Proceeding

John Reynolds is the assigned Commissioner and Shannon O'Rourke is the assigned ALJ in this proceeding.

⁸ D.12-12-033 at 8.

Findings of Fact

1. The Settling Parties held a settlement conference on December 1, 2022 that was recessed until it was reconvened on December 9, 2022. The settlement conference was held as required by Rule 12.1(b) of the Commission's Rules of Practice and Procedure with due notice to all parties to the proceeding.

2. The total amount of the residential California Climate Credit to be distributed in 2023 is approximately \$23.7 million.

3. PacifiCorp does not have any known EITE customers as of the date of its application.

4. The proposed semi-annual residential and small business per-customer California Climate Credit for California PacifiCorp customers in 2023 is \$268.56.

5. The impact of the proposed change to the GHG Surcharge is an overall rate increase of \$10.7 million or approximately 9.7%. This amount is reasonably based on forecast 2023 costs for the procurement of GHG Emission Allowances for PacifiCorp's retail compliance obligation under California's Cap-and-Trade Program, plus a true-up related to actual costs for prior years, and adjustments for franchise fees and uncollectibles.

6. On December 9, 2022, the Settling Parties jointly moved for approval of their Settlement regarding PacifiCorp's 2023 GHG Allowance Program Costs and Climate Credits and requested the admission of documents into evidence, and PacifiCorp moved for confidential treatment of exhibits admitted into evidence.

7. On January 1, 2023, an ALJ Ruling was issued admitting exhibits into the evidentiary record and granting confidential treatment of certain exhibits.

8. No party has stated any opposition to the Settling Parties' proposed partial settlement.

9. D.23-02-014 was adopted after the Settlement was submitted and requires, among other things, that PacifiCorp “accelerate the payment of the electric climate credit due to its residential customers in April 2023 to a date as soon as can be practicably implemented.” D.23-02-014 provides further guidance that “...the Commission expects the climate credit disbursement to begin no later than March 1, 2023 for all utilities” and acknowledges that for some entities “...the 2022 electric climate credit amount may need to be used if the Commission has not authorized a 2023 electric climate credit by the time the acceleration occurs.”

Conclusions of Law

1. The GHG Emissions Allowance program costs and Climate Credits in this proceeding are consistent with the methodologies set forth in prior Commission decisions.

2. The Settling Parties appropriately calculated the amounts of the GHG Emissions Allowance Program Costs determined in this proceeding and Climate Credits to be returned to customers in 2023.

3. As modified, the Settling Parties’ partial Settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

4. Hearings on the issues the Settling Parties agreed to in the Settlement are not necessary.

5. This proceeding should remain open to address the remaining issues identified in the Scoping Memo.

O R D E R

IT IS ORDERED that:

1. The partial settlement of PacifiCorp d/b/a Pacific Power, the California Farm Bureau Federation, and the Public Advocates Office at the California Public

Utilities Commission (collectively Settling Parties) dated December 9, 2022 is approved and the Settling Parties' motion for approval of the partial settlement is granted with the modifications outlined in Section 2.1.2 of this decision.

2. Within five days of the effective date of this decision, PacifiCorp d/b/a Pacific Power (PacifiCorp) shall file a Tier 1 Advice Letter with tariffs to distribute approximately \$23.7 million through issuance of the semi-annual California Climate Credit for PacifiCorp California residential and small business customers in 2023 of \$268.56 or other amounts as necessitated for compliance with Decision 23-02-014.

3. Within 30 days of the Commission decision approving the partial settlement regarding PacifiCorp d/b/a Pacific Power's (PacifiCorp's) 2023 Energy Cost Adjustment Clause Application, PacifiCorp shall file a Tier 1 Advice Letter to update its surcharge that recovers the costs for the procurement of greenhouse gas allowances for its retail compliance obligation under California's Cap-and-Trade Program consistent with this agreement.

4. All Greenhouse Gas (GHG) related forecasts approved in this proceeding are subject to reconciliation of costs and proceeds in subsequent proceedings. GHG outreach and administrative expenses are subject to further review at the time of reconciliation.

Application 22-08-001 remains open.

This order is effective today.

Dated _____, at San Francisco, California.